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Va. 379, 41 S. E. 721; *Walther v. Southern Pac. Co.* (1911) 159 Cal. 769, 116 Pac. 51. A possible view in the instant case would have been that the railroad did not stand in the relation of a common carrier to the passenger who was not being carried for hire, 12 Columbia Law Rev. 642, but that its position was analogous to that of a gratuitous bailee, see *Kinney v. Central R. R.* (1868) 32 N. J. L. 407, 410, *aff'd* (1869) 34 N. J. L. 513, 515; *Quimby v. Boston & M. R. R.* (1890) 150 Mass. 365, 371, 23 N. E. 205, and therefore that the prohibitory statute did not apply in this case. If it had taken this view, the court would then have been free to have followed the weight of authority, which is that the carrier of a passenger on a free pass may exempt itself from liability for negligence. *Boering v. Chesapeake Beach Ry.* (1904) 193 U. S. 442, 24 Sup. Ct. 515; 12 Columbia Law Rev. 642; 28 Harvard Law Rev. 560; *contra*, *Gulf, Colo. & S. F. Ry. v. McGown* (1886) 65 Tex. 640; *Annas v. Milwaukee & N. R. R.* (1886) 67 Wis. 46, 30 N. W. 282.

CONSTITUTIONAL LAW—IMMUNITY OF UNITED STATES FROM SUIT—ACTION AGAINST GOVERNMENT-OWNED CORPORATION.—The United States purchased the real and personal property, stock and bonds of the defendant railroad corporation. In a suit against the corporation for malicious prosecution, *held*, that without the consent of the government, the action could not be maintained. *Ballaine v. Alaska Northern Ry.* (C. C. A., 9th Cir. 1919) 259 Fed. 183.

The United States as well as any state thereof, is sovereign and cannot be sued without its consent. *Occidental Const. Co. v. United States* (C. C. A. 1917) 245 Fed. 817; *Smith v. Reeves* (1900) 178 U. S. 436, 20 Sup. Ct. 919. A government may exercise its functions through public officers and other agencies, *Berman v. Minnesota State Agriculture Soc.* (1904) 93 Minn. 125, 100 N. W. 732, and within their authority they are exempt from suit. *Ex parte Ayers* (1887) 123 U. S. 443, 8 Sup. Ct. 164. But where their authority is exceeded, although the agency may be liable the state is still exempt. See *Hans v. Louisiana* (1890) 134 U. S. 1, 16, 10 Sup. Ct. 504. Where the state is necessarily the true party in interest, even though not a party to the record, immunity is granted, *Hopgood v. Southern* (1886) 117 U. S. 52, 6 Sup. Ct. 608; see *Minnesota v. Hitchcock* (1902) 185 U. S. 373, 381, 22 Sup. Ct. 650, and it would seem the better reasoning not to deny the applicability of this rule, on the theory of corporate entity, where the state owns all the stock and property of a corporation. *Cf. Cunningham v. Macon & Brunswick R. R.* (1883) 109 U. S. 446, 3 Sup. Ct. 292; *contra*, *Panama R. R. v. Curran* (C. C. A. 1919) 256 Fed. 768. A distinction is often sought to be drawn rendering the agency, and through it, the state liable where the enterprise is of a private nature. *Hopkins v. Clemson Agricultural College* (1911) 221 U. S. 636, 647, 31 Sup. Ct. 654. It is submitted that the opposite conclusion is more clearly reasoned, immunity from suit, being a necessary adjunct to sovereignty should obtain in all suits against the government. *Murray v. Wilson Distilling Co.* (1909) 213 U. S. 151, 29 Sup. Ct. 458; *Riddoch v. State* (1912) 68 Wash. 329, 123 Pac. 450; *Clodfetter v. State* (1882) 86 N. C. 51. It should be noted that municipal corporations may be distinguished on the ground that they partake of sovereignty only where exercising public functions imposed by law; and where pursuing private enterprises, there is nothing inherent in such corporations that *per se* should render them immune. See *Hill v. City of Boston* (1877) 122 Mass. 344.